IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 6295 OF 1987

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

B.R.RAVAL

VERSUS

DDO, BARODA

Appearance:

MR BP TANNA for the Petitioner

None present for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 17/03/2001

C A V JUDGMENT

#. The petitioner by this petition under Article 227 of the Constitution of India challenges the judgement and order of the Gujarat Civil Services Tribunal, Gandhinagar

in Appeal No.8 of 1987 decided on 6.10.87 whereunder the Tribunal has declined to set aside the order dated 29.11.86 by the respondent No.1 under which the petitioner was dismissed from the services on proof of alleged misconduct against him.

#. The facts giving rise to the present petition as stated in the Special Civil Application are that the petitioner was Talati-cum-Mantri at Savli, Taluka Vaghodia, District Baroda during the year 1973. During the period of his tenure in the office, misappropriation of Rs.3,601/- was detected by the respondents. The respondent No.1 on 11.10.73 passed an order to file a criminal complaint for this misappropriation of the money of Panchayat against the petitioner. Accordingly, a criminal case No.238 of 1974 was registered in the court of Judicial Magistrate (First Class), Vaghodia against the petitioner. In this Criminal Case, the learned Judicial Magistrate vide judgement dated 3.9.74 held the petitioner guilty of the offence of misappropriating the Panchayat money and accordingly convicted under Section 409 of the IPC and sentenced him to imprisonment till the rising of the court and imposed a fine of Rs.250/=. After this conviction of the petitioner, the respondents have not taken any action whatsoever for almost about 2 years against him. The Deputy District Development Officer passed an order on 6.5.77 placing the petitioner' under suspension from the Panchayat services. As per the provisions of Rule 151 of the Bombay Civil Services Rules, 1959, the petitioner was ordered to be given Rs.1/- as token suspension allowance. The petitioner submitted that the provision of Rule 151 of the Bombay Civil Services Rules, 1959 were declared to be ultra vires and void by the Hon'ble supreme Court of India and subsequently the Government of Gujarat has issued a resolution dated 5.12.1983 directing all the authorities in the state to give effect to that judgment and pass suspension orders accordingly. The Deputy District Development Officer, Baroda took more than 2 and 1/2 years to give effect to this Government Resolution dated 5.12.1983 and restored full suspension allowance to the petitioner under its order dated 22.5.1986 subject to the stated conditions. One of the conditions that is the Condition No.4 was that the petitioner should submit copy of his appeal memo which he may have filed against the order of the Conviction and sentence within 15 days, failing which his right to receive suspension allowance would be lost. The petitioner has not complied with the aforesaid order of the Deputy District Development Officer, Baroda and that officer under the order dated 29.11.1986 cancelled its earlier order dated 22.5.1986.

The petitioner submits that on the same day the respondent No.1, District Development Officer, Baroda passed the order which was received by the petitioner on 1.12.86 dismissing the petitioner from the Panchayat Services. The District Development Officer, Baroda had written a letter to the Panchayat Services Selection Board on 28.2.1978 seeking approval of the order of dismissal of the petitioner from the services and the Board has accorded its approval to the order of dismissal of the petitioner from the services vide its communication dated 29.3.1978. From the order dated 22.5.1986 it appears that another criminal case No.472 of 1981 for the offences under Section 409 of the IPC was also registered against the petitioner and therein also the Judicial Magistrate has convicted the petitioner' in that case. But instead of sentencing him to any term of imprisonment of fine he had released him on probation under the provision of Probation of Offenders Act, 1958 on surety of good conduct for two years under supervision of the probation officer appointed under the Act aforesaid. The petitioner stated that the period of probation and supervision has come to an end on 11.8.1983. The reference has also been made by the petitioner to the Report of the Probation Officer made by him to the Taluka Development Officer. It is stated that under Section 12 of the Probation of Offenders Act, 1958 the petitioner had incurred no disqualification for the services.

#. The petitioner submitted that he was under suspension for a period of about 10 years. As a matter of fact the District Panchayat did not give suspension allowance to the petitioner' at all except Rs.1/= p.m. as token amount. Though the rule 151 of the Bombay Civil Services, 1959 is ultravires but the petitioner was not given the benefit of the same. The order is also passed for giving benefit to the petitioner of the subsistence allowance as per the resolution dated 5.12.1983 but the actual benefits were not given. The petitioner filed appeal before the Tribunal challenging the orders dated 29.11.1986 and the order under which he was dismissed from services. The appeal aforesaid was partly allowed to the extent it relates to the challenge to the order dated 29.11.1986 of the Deputy District Development Officer, Baroda under which he cancelled its order dated 22.5.1996 granting the petitioner subsistence allowance at the usual rates. The respondents were given directions to treat the petitioner under suspension from 11.5.77 till order of dismissal dated 29.11.1986 was served on him and to pay him subsistence allowance as per the Rule 151. The other relief prayed for quashing and

setting the order of the District Development Officer, Baroda dated 29.11.1986 dismissing the petitioner from services was not granted hence this petition.

#. Mr.Tanna, learned Senior Counsel for the petitioner' contended that the disciplinary authority has committed serious illegality in straightaway dismissing the petitioner from services only on the ground that he has been convicted in a criminal case. The petitioner could have been dismissed from the services only after applying mind and held that on conviction of the petitioner he cannot be retained in services. In his submission on conviction of criminal charges the employee does not automatically entail the dismissal / removal from services or reduction in rank. It has next been contended that the Disciplinary Authority has not applied his mind to the facts of the case. Thus automatic dismissal of the petitioner from services on his conviction in a criminal case is wholly arbitrary, unjustified and more so after a period of 12 years of the conviction. Lastly it is contended that the disciplinary authority has not applied its mind to the question of quantum of punishment also.

#. In this case both the respondents have not cared to file reply to the Special Civil Application. One of the respondents is the officer of the rank of Additional Development Commissioner of the Government of Gujarat and other is District Development Officer of District Panchayat. The position of the District Panchayat is also not better than what it is of the State of Gujarat and its officers. The District Panchayat which is a constitutional body and its officers act exactly in the manner and fashion as what it is done by the officers of the Government of Gujarat. In these facts and circumstances, I find sufficient justification in the claim made by the employees and officers of District Panchayat to treat them at par to the Government employees and officers. Their this behaviour in dealing with the case in judicial courts certainly justify for the claim of the parity in all respect in the employment and service conditions with the Government employees and officers. Not only this that none of the respondents has cared to file reply to the Special Civil Application but nobody is also present on their behalf to make even oral submissions. In case where the Government Officer or the officer of District Panchayat are not filing reply to the Special Civil Application, twofold inferences, follow therefrom; Firstly it may be a case where the officers are indirectly supporting the petitioner' for consideration or without consideration so as that he may

have easy way in the court to have a decision in his favour; Second is that they are not concerned with the matter or are negligent, careless and unmindful of their duties and obligation which they owe to the peoples. Both the things are very serious and in either case the Superior officers in the hierarchy is to take appropriate action against the erring and defaulting officers. If the District Panchayat or State Government loses a case in the court of justice and, thereby a heavy financial burden falls upon them only for the reason that the matter is not properly and effective contested, it ultimately affects the public exchequer and is against public interest. It is unfortunate that a regular permanent accountability cell is not established by the State of Gujarat, otherwise these erring and defaulting officers who are accountable for these loss and sufferings to the public exchequer, this amount has to be recovered on their being found to be negligent or careless in discharging of their duties from their pocket. In fact it amounts to squandering of the peoples money by these officers of the District Panchayat or Government of Gujarat. Any action or omission or dereliction of duties of the employees and officers of the district Panchayat or Government of Gujarat if results in monetary loss to the State Government or District Panchayat, it is akin to the public loss and against the public interest. On proof of the same they are to be dismissed from the services and at the same time this amount has to be recovered from them. Unless it is done, the House either it is of the district Panchayat or the Government of Gujarat will not be corrected.

#. It is not unknown that many of the good cases are lost by the State Government only for want of reply to the Special Civil Application or effective opposition of the case. It is more serious that nobody has taken care of these things at Gandhinagar and in substantial number of the cases the replies are not being filed.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

#. Conviction of an employee for the offences under Section 409 of IPC is certainly conviction for offences involving moral turpitude. It is proved in the criminal case that the petitioner' had misappropriated the money of the Panchayat. It is unfortunate that for such a serious offence on conviction of the petitioner the

Judicial Magistrate has taken very liberal view while deciding the question as to what punishment has to be given to the petitioner. Be that as it may.

#. It is not material what sentence has been given by the criminal court to the petitioner. Important thing is that he was convicted for the offences punishable under Section 409 of the IPC i.e. the offence involving moral turpitude. It is admitted by the petitioner that he has been convicted in another case for misappropriation of the Panchayat money and there also the Judicial Magistrate has taken a more lenient view and he was not sent to jail but released on the probation. If the courts are liberal even in such serious offences certainly it will encourage the employees and officers to indulge in such activities and it would not be in the larger interest of the public. In the offences relating to the misappropriation of the public money on proof of the charge the matter has to be taken very seriously and the punishment also to be severe. It is painful to state that in both the criminal cases the Judicial Magistrate has taken a very very lenient view which was totally uncalled for in this case. This is the first part of the matter.

##. Then comes the role of the officers of District Panchayat, Vadodara. If we go by the role of officers of the District Panchayat, Vadodara an inference can be drawn that the petitioner has been favoured by them at the cost of the public interest. Against the petitioner criminal case has been filed for the serious charges of misappropriation of the Panchayat money. The decision to file criminal complaint against the petitioner was taken by the district Panchayat on 11.10.1973 and within few days thereafter the criminal complaint had been filed at the police station concerned but the petitioner was not placed under suspension. If we go by the Gujarat Panchayat Services (Discipline and Appeal) Rules, 1964 there is a specific provision which empowers the disciplinary authority to place an employee under suspension against whom the departmental inquiry is contemplated or a criminal case is pending. The reference here may have to the Sub-rule (1) of Rule 4A of the rules aforesaid, which reads as under :-

> 4.A. Suspension - (1) The appointing authority, or any authority to which it is subordinate, or the disciplinary authority in that behalf may place a member of Panchayat Service under suspension :-

(a) Where a disciplinary proceeding against him is contemplated, or is pending, or

(b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation, inquiry or trial:

Provided that where the order of suspension is made by an authority subordinate to or lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made".

##. Not only this, even after conviction for this offence on 3.9.74, by the court, the officers of the District Panchayat have not taken action and though rule specifically provide, his services could have been dispensed with by dismissal or removal, after about more than two years of his conviction he was placed under suspension only. This resulted in heavy monetary loss to the District Panchayat and as a result of which to the public exchequer but nobody is bothered in the State for all these things.

##. It is no more res-integra that it is always open and permissible to the State Government/ District Panchayat to simultaneously proceed against the delinquent officer in respect of his misconduct which may also amount to his criminal liability by filing criminal complaint and initiating departmental inquiry. Misappropriation of the Panchayat's money, leaving apart that it is a criminal offence committed by the petitioner, is equally a serious misconduct but still in such matters for the reasons best known to the District Panchayat, it has not initiated any departmental inquiry against the petitioner nor he has been placed under suspension. In such matters, the departmental inquiry could have legally been initiated against the petitioner. It is true that in an appropriate case, where the criminal case has also been filed, the courts may stay the proceedings of the departmental inquiry but that is not the case here.

##. Article 311 of the Constitution of India provides that no person who is a member of Civil Services of the State shall be dismissed or removed or reduced in rank except after inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. It is provided by sub-clause 2 of Article 311 of the Constitution. Proviso

(a) to Article 311 of the Constitution provides that this clause 2 of Article 311 of the Constitution shall not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on criminal charge. Here in this case, dismissal of the petitioner has been made or ordered on the ground of the conduct which has led to his conviction on criminal charge. In this case, he has been convicted for an offence involving moral turpitude. The Panchayat employees claim themselves to be civil servants for parities in service conditions and benefits and it was held to be so by this court and that judgment has been confirmed by the Hon'ble Supreme Court. It was not obligatory on the part of the District Panchayat to hold an inquiry in the matter and after conviction of the petitioner for this offence involving moral turpitude, he should have been dismissed or removed from services.

##. The Gujarat Panchayat Services (Discipline and Appeal Rules), 1964, are to be referred here. The Rule 10 thereof provides special procedure in certain cases to be followed. This rule provides that nothing contained in Rules 7, 8 and 2 shall apply where a penalty is to be imposed on a Panchayat servant on the ground of conduct which led to his conviction on a criminal charge. It is provided under sub-rule 2 of this rule that in the case to which the provisions of sub-rule (1) shall apply the disciplinary authority may have to consider circumstances of the case concerned and pass such order therein as it deems fit. It is further provided that where prior consultation is necessary with the Board, it shall be consulted before passing such orders. So these provisions are analogous to proviso (a) to sub-clause 2 of Article 311 of the Constitution. In a case where penalty is to be imposed on Panchayat servant on the ground of conduct which has led to his conviction on a criminal charge, no inquiry is required to be held by them by virtue of provisions contained under Article 311 of the Constitution and rule 10 of the Rules aforesaid. Only the disciplinary authority may consider the circumstances of the case concerned and pass the order therein.

##. The learned counsel for the petitioner contended that the disciplinary authority has not applied its mind to the circumstances of the case and straightway ordered for dismissal of the petitioner. I fail to see what mind could have been applied in a case where the minimum penalty on conviction of the petitioner for an offence involving moral turpitude would have been dismissal or removal of the petitioner from services. Even if the

learned counsel for the petitioner may be technically correct, this court is not sitting under Article 226 of the Constitution of India to protect such Panchayat servants who are involved in activities of misappropriation of Panchayat money. It is not the case where the petitioner has misappropriated the Panchayat money once but at least in two case of this nature, he has been convicted. In a case where the Panchayat servant is convicted for the offence u/s.409 of Indian Penal Code involving moral turpitude, on conviction thereof, minimum penalty would have been and should have been of dismissal or removal of his from the services. In this case, even if it is accepted for sake of argument that the disciplinary authority has not applied its mind to the circumstances of the case, the penalty given is the only appropriate and proper which could have been and should have been imposed and on this ground, no interference can be made with the order of the disciplinary authority made in this case. Rightly, the Tribunal has not interfered with this order. In such case, there is no question of substituting any other penalty for this penalty of dismissal or removal either by Tribunal or even by this Court. Otherwise also, it is not a penalty which is harsh or disproportionate to the conduct of the petitioner which led to his conviction by the criminal court.

##. The next contention raised by learned counsel for the petitioner that after 12 years of conviction, the petitioner has been dismissed from service is hardly of any substance and help to him. If the petitioner has not been dismissed for 12 years, he has been benefitted and he has taken benefit of the same as he got the amount of subsistence allowance. Otherwise, he could have been dismissed immediately on his conviction. I fail to see by this delay, how the dismissal order passed in this case can be set aside by this court. If it is done only on the ground of delay for which the petitioner is not sufferer or causes inconvenience to him, what this court will do is to reinstate and allow to continue in services, a Panchayat employee who has indulged in activities of misappropriation of the Panchayat money. This court is not for doing this. The court can protect and may have sympathy and liberal approach in the case of bonafide and honest employees and not for those who are committing misappropriation of the money of the Panchayat. In fact, because of this inaction and omission, deliberate or otherwise of the officers of the District Panchayat, the petitioner got a lottery or reward i.e. the amount of subsistence allowance for all these 12 years and still he wants to take benefit of this

delay made in passing the order by respondents. This writ petition is wholly misconceived and frivolous. In fact, it is clearly a case to make an attempt to abuse the process of the court by the petitioner.

##. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any earlier granted stands vacated. It is a case where exemplary costs would have been awarded against the petitioner but unfortunately nobody is present on behalf of the respondents. This shows that not only the petitioner is favoured, supported and protected by the officers of the District Panchayat at all levels but even at this level also he seems to have been protected and favoured by the respondents. In the facts of the case, no order as to costs.

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(subu/sunil)